

**BEFORE THE STATE BOARD OF  
EMBALMERS AND FUNERAL DIRECTORS  
STATE OF MISSOURI**

In the Matter of the Application of:

PERPETUA HOLDINGS, INC.  
D/B/A WADE TWIN CHAPEL

**ORDER ISSUING PROBATED SELLER LICENSE**

The State Board of Embalmers and Funeral Directors (the "Board") pursuant to Section 324.038, RSMo<sup>1</sup>, issues a **PROBATED PRENEED SELLER LICENSE** to Perpetua Holdings, Inc. d/b/a Wade Twin Chapel ("Licensee or "Wade Funeral") located at 4800 Natural Bridge, St. Louis, Missouri 63115.

As set forth in Section 324.038, RSMo, Licensee may submit a written request for hearing to the Administrative Hearing Commission seeking review of the Board's decision set forth in this Order. Such written request must be filed with the Administrative Hearing Commission within 30 days of the date the Board mails this Order to Licensee. The written request should be addressed to the Administrative Hearing Commission, Room 640, Truman State Office Building, P. O. Box 1557, Jefferson City, Missouri 65102-1557. Any such request should set forth that the applicant is qualified for nonprobated licensure pursuant to the laws and administrative regulations relating to Licensee's profession. If such review is requested, the Administrative Hearing Commission shall hold a hearing pursuant to Chapter 621, RSMo. A Commissioner of the Administrative Hearing Commission will preside over the hearing. The hearing will be on the record and recorded by a court reporter. At the

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<sup>1</sup> All statutory references are to the Revised Statutes of Missouri (2000), as supplemented, unless otherwise indicated.

hearing, Licensee shall have the right to present testimony, call witnesses on its behalf, introduce evidence, cross-examine any witnesses called by the Board, and object to any evidence introduced by the Board and make legal argument to the Commission. Following the hearing, the Administrative Hearing Commission will issue an order including findings of fact, conclusions of law and a decision based on the evidence admitted at the hearing. A copy of the Administrative Hearing Commission's order will be delivered to the parties. Chapter 536, RSMo, sets forth the procedures for review of the order of the Administrative Hearing Commission.

If no written request for review is filed with the Administrative Hearing Commission within the 30-day period, the right to seek review of the Board's decision shall be considered waived. Section 324.038.2, RSMo. Should Licensee make written request for review of this Order, the terms and conditions of this Order shall remain in full force and effect unless and until such time as the Administrative Hearing Commission or reviewing court orders otherwise.

#### **Relevant Statutes and Regulation**

1. Section 333.320, RSMo, requires a license to be a seller and states:
  1. No person shall sell, perform, or agree to perform the seller's obligations under, or be designated as the seller of, any preneed contract unless, at the time of the sale, performance, agreement, or designation, such person is licensed by the board as a seller and authorized and registered with the Missouri secretary of state to conduct business in Missouri.
  2. An applicant for a preneed seller license shall:
    - (1) File an application on a form established by the board and pay an application fee in an amount established by the board by rule;

- (2) Be an individual resident of Missouri who is eighteen years of age or older, or a business entity registered with the Missouri secretary of state to transact business in Missouri;
- (3) If the applicant is a corporation, each officer, director, manager, or controlling shareholder, shall be eligible for licensure if they were applying for licensure as an individual;
- (4) Meet all requirements for licensure;
- (5) Identify the name and address of a custodian of records responsible for maintaining the books and records of the seller relating to preneed contracts;
- (6) Identify the name and address of each licensed provider that has authorized the seller to designate such person as a provider under a preneed contract;
- (7) Have established, as grantor, a preneed trust or an agreement to utilize a preneed trust with terms consistent with sections 436.400 to 436.520. A trust shall not be required if the applicant certifies to the board that the seller will only sell insurance-funded or joint account-funded preneed contracts;
- (8) Identify the name and address of a trustee or, if applicable, the financial institution where any preneed trust or joint accounts will be maintained; and
- (9) File with the board a written consent authorizing the state board to inspect or order an investigation, examination, or audit of the seller's books and records which contain information concerning preneed contracts sold by or on behalf of the seller.

3. Each seller shall apply to renew his or her license on or before October thirty-first of each year or a date established by the division of professional registration pursuant to section 324.001. A license which has not been renewed prior to the renewal date shall expire. Applicants for renewal shall:

- (1) File an application for renewal on a form established by the board by rule;
- (2) Pay a renewal fee in an amount established by the board by rule; and

(3) File annually with the board a signed and notarized annual report as required by section 436.460.

4. Any license which has not been renewed as provided by this section shall expire. A licensee who fails to apply for renewal within two years of the renewal date may apply for reinstatement by satisfying the requirements of subsection 3 of this section and paying a delinquent fee as established by the board by rule.

2. Section 324.038, RSMo, authorizes the Board to issue a license subject to probation in lieu of denial and states:

1. Whenever a board within or assigned to the division of professional registration, including the division itself when so empowered, may refuse to issue a license for reasons which also serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action against a holder of a license, the board, as an alternative to refusing to issue a license, may, at its discretion, issue to an applicant a license subject to probation.

2. The board shall notify the applicant in writing of the terms of the probation imposed, the basis therefor, and the date such action shall become effective. The notice shall also advise the applicant of the right to a hearing before the administrative hearing commission, if the applicant files a complaint with the administrative hearing commission within thirty days of the date of delivery or mailing by certified mail of written notice of the probation. If the board issues a probated license, the applicant may file, within thirty days of the date of delivery or mailing by certified mail of written notice of the probation, a written complaint with the administrative hearing commission seeking review of the board's determination. Such complaint shall set forth that the applicant or licensee is qualified for nonprobated licensure pursuant to the laws and administrative regulations relating to his or her profession. Upon receipt of such complaint the administrative hearing commission shall cause a copy of such complaint to be served upon the board by certified mail or by delivery of such copy to the office of the board, together with a notice of the place of and the date upon which the hearing on such complaint will be held. Hearings shall be held pursuant to chapter 621. The burden shall be on the board to demonstrate the existence of the basis for imposing probation on the licensee. If no written request for a hearing is received by the administrative hearing commission within the thirty-day period, the right to seek review of the board's decision shall be considered waived.

3. If the probation imposed includes restrictions or limitations on the scope of practice, the license issued shall plainly state such restriction or limitation. When such restriction or limitation is removed, a new license shall be issued.

3. Section 333.330, RSMo, authorizes the Board to deny an application for a Seller's license and states, in relevant portion:

1. The board may refuse to issue any certificate of registration or authority, permit, or license required under this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit, or license required by this chapter, or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit, or license for any one or any combination of the following causes:

\* \* \*

(4) Obtaining or attempting to obtain any fee, charge, tuition, or other compensation by fraud, deception, or misrepresentation;

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation, or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant thereto;

(7) Impersonation of any person holding a certificate of registration or authority, permit, or license or allowing any person to use his or her certificate of registration or authority, permit, license, or diploma from any school;

\* \* \*

(11) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by this chapter regulating preneed who is not licensed or registered and currently eligible to practice thereunder;

\* \* \*

(14) Violation of any professional trust or confidence;

4. Section 436.405(7), RSMo, defines a preneed contract as:

(7) "Preneed contract", any contract or other arrangement which provides for the final disposition in Missouri of a dead human body, funeral or burial services or facilities, or funeral merchandise, where such disposition, services, facilities, or merchandise are not immediately required. Such contracts include, but are not limited to, agreements providing for a membership fee or any other fee for the purpose of furnishing final disposition, funeral or burial services or facilities, or funeral merchandise at a discount or at a future date;

5. Section 436.415.2, RSMo, sets forth duties of a preneed seller and

states:

2. The seller designated in a preneed contract shall be obligated to collect and properly deposit and disburse all payments made by, or on behalf of, a purchaser of a preneed contract and ensure that is statutorily and contractual duties are met, in compliance with sections 436.400 to 436.520.

6. Section 333.325.1, RSMo, requires a registration to engage in the practice of selling preneed contracts as a preneed agent and Section 333.325.2, RSMo, sets forth the requirements for registration. These sections state:

1. No person shall sell, negotiate, or solicit the sale of preneed contracts for, or on behalf of, a seller unless registered with the board as a preneed agent except for individuals who are licensed as funeral directors under this chapter. The board shall maintain a registry of all preneed agents registered with the board. The registry shall be deemed an open record and made available on the board's web site.

2. An applicant for a preneed agent registration shall be an individual who shall:

(1) File an application on a form established by the board and pay an application fee in an amount established by the board by rule which shall not exceed fifty percent of the application fee established by the board under this chapter for a funeral director license;

(2) Be eighteen years of age or older;

(3) Be otherwise eligible for registration under section 333.330;

(4) Have successfully passed the Missouri law examination as designated by the board;

(5) Provide the name and address of each seller for whom the applicant is authorized to sell, negotiate, or solicit the sale of preneed contracts for, or on behalf of.

7. Section 333.325, RSMo, became law on August 29, 2009. To allow for the business of preneed sales to continue while the licensing mechanics were put into place by the Board, the Board enacted emergency rule 20 CSR 2120-3.100 that states:

(1) Any person wishing to conduct business as a preneed seller or preneed provider or wishing to register as a preneed sales agent (the "applicant") must fully complete and file with the state board a "Notice of Intent to Apply for Licensure/Registration" (notice of intent) prior to engaging in any conduct for which a preneed seller license, a preneed provider license or a preneed sales agent registration is required. The board shall provide the notice of intent as an electronic document on its website. No fee shall be required to accompany the notice of intent. Only the official notice of intent form shall be accepted by the board.

(2) Applicants may file the notice of intent with the board by hand delivery, by mail, by fax or by other electronic means such as e-mail. If the notice of intent is filed by fax or other electronic means, the applicant shall also provide the original signed document to the board by mail or other delivery method.

(3) All applicants must meet the requirements for licensure as set forth in Chapter 333, RSMo and must certify that, to the best of their knowledge, they are eligible for licensure/registration.

(4) If the board determines that the applicant lacks the statutory qualifications for licensure/registration, the board may terminate the temporary authorization to practice under the notice of intent by notifying the applicant in writing of the termination and the reason for the termination. An applicant may apply for full licensure or registration even if the board has terminated his/her authority to practice pursuant to the notice of intent.

(5) Any applicant who has filed a notice of intent must file their completed application for licensure or registration with the board no later than October 31, 2009.

(6) The applicant shall keep a copy of the notice of intent and shall prominently display this notice of intent as if it were a license or registration issued pursuant to Chapter 333, RSMo.

(7) Any person with a filed notice of intent shall be authorized to engage in the practice of preneed selling, providing or as a sales agent, as so indicated on the notice of intent, provided that the applicant has timely filed his/her application for licensure and/or registration. This authorization to practice shall be effective from the date the board receives the notice of Intent and shall end on the date the board either issues a license or registration or denies the application for licensure/registration or until midnight on December 31, 2009, whichever comes first. The board shall promptly notify the applicant of its decision to issue a license/registration or its denial of same.

(8) Any conduct that may be cause for discipline that occurs between August 28, 2009 and December 31, 2009 shall be considered by the board in its decision to issue or deny any application for licensure and/or registration. In addition, if the board issues a license or registration and later discovers conduct that would be cause for discipline occurred between August 28, 2009 and December 31, 2009, the board shall have authority to seek discipline against the licensee or registree for that conduct as if the person were fully licensed or registered while operating under the authority of the notice of intent.

### **Parties and Background**

8. The Board is an agency of the State of Missouri created and established pursuant to Section 333.151, RSMo, and vested with the authority to execute and enforce the provisions of Chapter 333 and portions of Chapter 436, RSMo.



9. Perpetua Holdings, Inc., is a Missouri corporation in good standing. Wade Twin Chapel is a registered fictitious name owned by Perpetua Holdings, Inc.
10. Perpetua Holdings, Inc. also holds a current and active funeral establishment, preneed provider license number 2009039083.
11. Licensee previously registered with the Board as a preneed seller prior to the enactment of the current provisions of law that require a seller to hold a license and not just to register with the Board.
12. When Licensee's seller registration became void by operation of law on August 28, 2009, Licensee took no action to obtain and had no lawful authority to act as a seller from August 28, 2009 until the effective date of this Order.
13. Wade Funeral applied for its seller license by submitting to the Board its "Seller Application" that Randy Sanderson signed on behalf of Wade Funeral on July 29, 2011. The Board received the application on August 23, 2011.
14. Roosevelt Curren ("Curren") currently works and, at all times relevant to the facts found in this Order worked, in one of Licensee's licensed funeral establishments and sold preneed funeral contracts on behalf of Licensee.

#### **Basis for Probation**

15. The Board requested from Licensee and received copies of preneed contracts sold by Curren on behalf of Wade Funeral between August 1, 2009 and February 1, 2011. Licensee provided the Board with 113 insurance funded preneed contracts sold by Curren during this time period.
16. Between August 1, 2009 and February 1, 2011, Curren held no valid registration to act as a preneed agent because he had not completed the requirements for

registration or for authority to sell under the Notice of Intent, including the requirement that he be authorized to sell on behalf of a licensed seller because Wade Funeral held no valid seller license. Section 333.325, RSMo, and 20 CSR 2120-3.100.

17. Curren sold preneed contracts, as an agent and on behalf of Wade Funeral, as summarized below:

Date Prened Contract Signed	Number Sold	Curren's registration status
August 27, 2009 or before	4	No registration required
August 28 - September 22, 2009	8	Not registered
September – October, 2009	8	Registered via Notice of Intent
November 1, 2009 – December 31, 2009	6	Not registered
January 1, 2010 and after	87	Not registered

18. Curren acted as a preneed agent on behalf of Licensee in the sale of 101 preneed contracts when he could not lawfully do so as he held no preneed agent registration as required by Section 333.325.1, RSMo and Licensee held no seller license and thus could not lawfully authorize Curren to sell preneed contracts on its behalf.

19. Wade Funeral also reported, in its Seller Application that it also had 13 active preneed contracts funded by joint accounts.

### **Conclusions of Law**

20. A seller license is required to operate as a seller by entering into new preneed funeral contracts funded by insurance.

21. A seller license is required to operate as a seller by holding preneed funds in a joint account as a means to fund preneed funeral contracts.

22. A seller license is required to be designated as the seller or agreeing to perform any of the seller's obligations in a preneed funeral contract, including holding funds in a joint account used to fund a preneed contract.

23. Wade Funeral's conduct of operating as a preneed seller and allowing an agent to sell preneed funeral contracts on its behalf when it was not so licensed provides basis for the Board to deny Wade Funeral's "Seller Application" pursuant Sections 333.330.2(4), (5), (6), (7), (11), and (14), RSMo.

24. The Board finds that issuance of a probated seller license, subject to certain terms and conditions, in lieu of denial, will ensure protection of the public.

**Issuance of Probated License Subject to Terms and Conditions**

The Board, in lieu of denial, hereby issues a seller license to Perpetua Holdings, Inc. d/b/a Wade Twin Chapel, on **PROBATION** for a period of **FIVE YEARS** (the "Disciplinary Period") subject to the terms and conditions contained in this Order and set forth below.

**Terms and Conditions of Probation**

25. Licensee shall comply with the following terms and conditions of probation during the Disciplinary Period:

**General Requirements**

- a. Licensee shall keep the Board informed of Licensee's current work and home telephone numbers and addresses. Licensee shall notify the Board in writing within ten (10) business days of any change in this information. If Licensee utilizes e-mail, Licensee shall provide the Board with a current and active e-mail address for the manager in charge;
- b. Licensee shall comply with all applicable provisions of Chapters 194; 333 and 436, RSMo, all Board regulations and all federal, state and local laws and regulations related to business operations in the funeral and death care

industry including all insurance laws applicable to insurance used to fund preneed funeral contracts;

- c. Licensee shall engage in no conduct that would give the Board cause to seek authority to discipline from the Administrative Hearing Commission;
- d. Licensee shall meet in person with the Board or any Board representative at any such time and place as required by the Board or its representative upon reasonable notice. Any such meetings shall be at the Board's discretion;
- e. Licensee shall submit written compliance reports to the Board no later than January 1 and July 1 of each year, but no compliance report shall be filed more than 14 days before it is due. Each of these compliance reports shall state truthfully whether there has been full compliance with the terms and conditions of this Order for the previous six month period and shall fully explain any non-compliance. These compliance reports shall contain all other information required by this Order. Compliance reports may be submitted on a form provided by the Board, but failure to receive such a form from the Board shall not excuse the timely filing of any compliance report;
- f. Upon the request by the Board or its representative, Licensee shall immediately submit any and all records requested to show compliance with these terms and conditions;
- g. Licensee shall renew timely all licenses and/or registrations, shall pay timely all fees required for licensure/registration and shall meet all other

requirements necessary to maintain all licenses and registrations issued by the Board current and active; and

- h. Licensee shall accept and cooperate with unannounced visits from the Board, or its representatives, to monitor compliance with the terms and conditions of probation.

26. Upon the expiration of the Disciplinary Period and successful completion of the probation, Licensee's seller license shall be fully restored if all other requirements of the law have been satisfied.

27. If the Board determines that Licensee has violated a term or condition of this Order, and that violation would also be actionable in a proceeding before the Administrative Hearing Commission or in a circuit court, the Board may elect to pursue any lawful remedies or procedures afforded to it and is not bound by this Order in its determination of appropriate legal actions concerning such violation(s).

28. If any alleged violation of this Order occurs during the Disciplinary Period, the Board may choose to conduct a hearing on the alleged violation either during the Disciplinary Period, or as soon thereafter as a hearing can be held, to determine whether a violation of the terms and conditions of probation occurred and, if so, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may impose additional probation, suspend, revoke or otherwise lawfully discipline the licensee. The Board has continuing jurisdiction to hold a hearing determine if a violation of the terms and conditions of probation occurred.

29. The Board shall enter no order imposing further discipline on Licensee's provider license without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

30. This Order of the Board shall be maintained as an open and public record of the Board as provided in Chapters 333, 610 and 324, RSMo.

**IT IS SO ORDERED.**

Dated: 11.3.2011

Sandy Sebastian

Sandy Sebastian  
Executive Director  
State Board of Embalmers and Funeral Directors